

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

ALESSANDRO DEMARCO, et al., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

AVALONBAY COMMUNITIES, INC., et al.,

Defendants.

Consolidated Civil Action  
No. 2:15-cv-00628-JLL-JAD

CLASS ACTION

**ORDER GRANTING FINAL  
APPROVAL OF CLASS  
SETTLEMENT**

Before the Court is Plaintiffs' unopposed application requesting that the Court enter an Order granting final approval of a class action settlement involving Plaintiffs Ebony Cooley and Digna Gutierrez (hereinafter "Plaintiffs") and Defendant AvalonBay Communities, Inc. (hereinafter "Defendant"), as fair, reasonable and adequate, awarding attorneys' fees and costs to Class Counsel as outlined herein, and awarding an incentive payment to Plaintiffs as detailed below.

Having reviewed and considered the Stipulation of Class Action Settlement, the application for final approval of the settlement, an award of attorneys' fees and costs, and an incentive award to the Plaintiffs, and having conducted a final approval hearing, the Court makes the findings and grants the relief set forth below approving the settlement upon the terms and conditions set forth in this Order.

**THE COURT** not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

**THE COURT** being required under Federal Rule of Civil Procedure 23(e) to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether

the settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

IT IS ON THIS 11 day of July, 2017,

**ORDERED** that:

1. The settlement involves allegations in Plaintiffs' Consolidated Class Action Complaint and Jury Demand against Defendant for Negligence and Private Nuisance related to the January 21, 2015 fire at the apartment complex known as The Avalon at Edgewater.
2. Defendant has denied any wrongdoing and denies all liability alleged in the Complaint;
3. The settlement does not constitute an admission of liability by Defendant, and the Court expressly does not make any finding of liability or wrongdoing by Defendant.
4. Unless otherwise noted, words spelled in this Order with initial capital letters have the same meaning as set forth in the Stipulation of Class Action Settlement.
5. On March 13, 2017, the Court entered a Preliminary Approval Order which among other things: (a) conditionally certified this matter as a class action, including defining the class and class claims, appointing Plaintiffs as Class Representatives, and appointing Co-Lead Counsel as Class Counsel; (b) preliminarily approved the First Amended Stipulation of Class Action Settlement; (c) approved the form and manner of Notice to the Settlement Class; (d) set deadlines for opt-outs and objections; (e) approved and appointed the Claims Adjuster; (f) approved and appointed the claims administrator; and (g) set the date for the Final Fairness Hearing.
6. In the Preliminary Approval Order, pursuant to *Rule 23(b)(3)*, for settlement purposes only, the Court certified the Settlement Class, defined as follows:

All residents and occupants of the Russell Building at Avalon at Edgewater as identified on the operative lease agreements as of January 21, 2015, whose property in a Russell Building apartment or storage unit was destroyed by The Fire.

7. The Court, having reviewed the terms of the First Amended Stipulation of Class Action Settlement submitted by the parties pursuant to *Rule 23(e)(2)*, grants final approval of the First Amended Stipulation of Class Action Settlement and defines the Settlement Class as defined therein and in the Preliminary Approval Order, and finds that the settlement is fair, reasonable and adequate and meets the requirements of *Rule 23*.
8. The First Amended Stipulation of Class Action Settlement provides, in part, and subject to a more detailed description of the settlement terms in that Agreement, for:
  - A. Defendant to institute a Settlement Claims Process as outlined in the First Amended Stipulation of Class Action Settlement whereby Class Members can submit claims that will be evaluated by a Claims Adjuster mutually agreed upon by Class Counsel and Defendant. Class Members who agree to participate in the settlement will not be required to indemnify AvalonBay for any insurance subrogation claims related to The Fire, and will not be releasing any right regarding subrogation that has not previously been released.
  - B. Defendant to pay all costs of Claims Administration and Settlement Administration, including the cost of Claims Administrator, Claims Adjuster, mailing notice, and preparing and mailing checks.
  - C. Defendant to pay the reasonable attorneys' fees of Class Counsel, which shall be limited to \$1,900.00 for each Russell Building unit for which a Claim(s) is submitted and an award issued pursuant to this Settlement Agreement.
  - D. Class Counsel to pay incentive awards of \$2,500.00 per Class Representative.
9. The terms of the First Amended Stipulation of Class Action Settlement Agreement are fair, adequate, and reasonable and are hereby approved, adopted, and incorporated by the Court. The parties, their respective attorneys, Claims Administrator, and the Claims Adjuster are hereby directed to consummate the settlement in accordance with this Order and the terms of the First Amended Stipulation of Class Action Settlement.
10. Notice of the Final Approval Hearing, the application for counsel fees and costs, and the proposed payments to the Class Representative have been provided to Settlement Class

Members as directed by this Court's Orders, and proof of Notice has been filed with the Court by Defendant.

11. The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Rule 23(c)(2)(B).
12. Only 182 of potential settlement class members have requested to be excluded from the Settlement which is 66 of the 229 occupied Russell Building units, and less than 62% of the 294 residents and occupants of Russell Building units who were successfully mailed notices.
13. The Court has considered all the documents filed in support of the settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the final hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.
14. Pursuant to the First Amended Stipulation of Class Action Settlement, Defendant, the Claims Administrator, Claims Adjuster, and Class Counsel shall implement the settlement in the manner and time frame as set forth therein.
15. Pursuant to the First Amended Stipulation of Class Action Settlement, Plaintiffs and the Settlement Class Members release claims as follows:

Any individual, class, representative, group or collective claim, cost, attorneys' fees, court and litigation expenses, judgment, liability, expense, right, controversy, demand, suit, matter, obligation, damage (including, but not limited to, contract damage, compensatory damage, tort damage for bodily injury, personal injury, emotional distress, property damage and/or any other claim and punitive damage), loss, action or cause of action, of every kind, character and description whatsoever, either direct or consequential, at law or in equity, that a Releasing Party has or may have, including assigned claims, whether known or unknown, asserted or unasserted, latent or patent, suspected or unsuspected, concealed or hidden, that is, has been, could have been or in the future might reasonably be asserted, inferred, implied, included or connected under any body of law (federal law, common law, or under the laws of any state) by the Releasing

Party either in the Court or any other court or forum, regardless of legal theory or relief claimed, and regardless of the type of relief or amount of damages claimed, against any of the Released Parties arising from, concerning or in any way relating to The Fire and/or the Avalon at Edgewater complex and/or the construction, leasing or operation by AvalonBay or its employees of the Avalon at Edgewater complex, including any claims asserted or which could have been asserted in the Action. Plaintiffs Ebony Cooley and Digna Guitierrez and each Settlement Class Member fully, finally and forever settle, release and discharge all Released Parties from and against any and all Released Claims, including Edgewater Financing, LLC, AvalonBay Communities, Inc. and its insurers including, without limitation, Houston Casualty Company, Network Adjusters, Inc., Indian Harbor Insurance Company, QBE Insurance Corporation, Great American Insurance Company of New York, National Surety Corporation, Ohio Casualty Insurance Company, Navigators Insurance Company, the lenders to Edgewater Financing, LLC, and all entities and individuals involved in the design or construction of the Avalon at Edgewater complex; and all of their current and former affiliates, parents, subsidiaries, predecessors, successors and assigns and their past, present and future officers, directors, agents, servants, employees, members, partners, shareholders, attorneys, legal representatives, heirs, executors and administrators and any person, company or entity associated with or acting on their behalf.

Upon occurrence of the Effective Date, and to the fullest extent permitted by law, Plaintiffs and each member of the Settlement Class either directly, indirectly, representatively, as a member or on behalf of the general public, or in any other capacity, are and shall be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in, any action in this or any other forum (other than participation in the settlement as provided for in this Stipulation) in which any of the Released Claims are asserted against the Released Parties.

Plaintiffs and each member of the Settlement Class have released all of their claims against Defendant that they could have brought in their Complaint including the release of all claims for personal injuries arising out of The Fire.

16. Pursuant to the First Amended Stipulation of Class Action Settlement, and in recognition of their efforts on behalf of the Settlement Class, the Court approves payments to Plaintiffs in the total amount of \$2,500.00 each as an incentive payment for their efforts on behalf of the Settlement Class. Class Counsel shall make such payment in accordance with the terms of the First Amended Stipulation of Class Action Settlement.

17. The Court has appointed Benjamin F. Johns of Chimicles & Tikellis LLP; Bruce D. Greenberg of Lite DePalma Greenberg, LLC; and Daniel R. Lapinski of Wilentz, Goldman & Spitzer, P.A. as Class Counsel.
18. The Court, after careful review of the time entries and rates requested by Class Counsel, and after applying the appropriate standards required by relevant case law, hereby grants Class Counsel's application for attorneys' fees in the amount of \$1,900 for each Russell Building unit for which a Claim(s) is submitted and an award issued pursuant to this Settlement Agreement. In addition, 6% shall be paid directly from the award received by each Claimant, which payment from each award shall include all costs and expenses for time already spent and time to be spent in this Litigation (excluding responding to Notices of Rejection, arbitration submissions, arbitration proceedings, appellate submissions and appellate proceedings as to which Class Counsel reserves the right to represent Class Members for an additional fee to be negotiated with the individual Class Member), including but not limited to finalizing the Settlement Agreement, preparing settlement documents, drafting briefs, communicating with the Settlement Class, attending hearings and monitoring of the settlement. Payment shall be made pursuant to the terms of the First Amended Stipulation of Class Action Settlement.
19. This Order resolves all claims against all parties in this action and is a final order.
20. The matter is hereby dismissed with prejudice and without costs except that the Court reserves jurisdiction over the consummation and enforcement of the settlement.
21. Counsel for the parties shall work together to ensure that notice of the entry of this order will be provided to class members who did not opt-out (and who can be identified) within five business days.

  
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Honorable Claire C. Cecchi

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# EXHIBIT A



<b><u>OPT-OUT LIST</u></b>		
<b>No. of Apts.</b>	<b>APT. NO.</b>	<b>NAME</b>
1	103 Russell	Yesol Lee
	103 Russell	Jeonggwon Lee
2	105 Russell	Sarah Kaufman
	105 Russell	Emily Kaufman
	105 Russell	Noah Kaufman
	105 Russell	Roman Kaufman
	105 Russell	Aaron Kaufman
3	106 Russell	Michelle Marlowe
	106 Russell	Rhonda Fishman
4	124 Russell	Candida Boyette-Clemons
	124 Russell	Azza Symone Clemons
	124 Russell	Herbert Clemons
5	130 Russell	Satoko Yokoyama
	130 Russell	Yataro Yokoyama
	130 Russell	Tetsuya Yokoyama
6	134 Russell	Hamza Alkhayyat
7	136 Russell	Altagracia Correa
8	137 Russell	Judy Moon
	137 Russell	Carson Moon
	137 Russell	Zoe Moon
	137 Russell	Kyung Moon
	137 Russell	Tae Moon
9	141 Russell	Sandra Medina
	141 Russell	Christopher Medina
10	153 Russell	Andrew Paquin
	153 Russell	Inger Gomez
11	154 Russell	Duk Kyu Kim
	154 Russell	Eun Hye Yeo
	154 Russell	Yool Kim



12	160 Russell	Anton Meshchankin
	160 Russell	Alla Lyfenko
	160 Russell	Anna Meshchankina
	160 Russell	Kirill Meshchankin
13	207 Russell	Katharine Mularczyk
14	208 Russell	Karina Gonzalez Chhabra
	208 Russell	Mohina Chhabra
	208 Russell	Francisco Gonzalez
15	211 Russell	Gabriel Cavellucci-Landi
	211 Russell	Lucas Cavellucci-Landi
	211 Russell	Jan Carlo Landi
	211 Russell	Carla Cavellucci-Landi
16	215 Russell	Yeon Hee Kim
	215 Russell	Lena Yeon Kim
	215 Russell	Sungyoung Chung
17	216 Russell	Parimala Rao
	216 Russell	Aditya Rao
	216 Russell	Punjavi Manoj
18	218 Russell	Heba Alhejji
	218 Russell	Maryam Zainaddin
	218 Russell	Noor Zainaddin
	218 Russell	Zainab Zainaddin
	218 Russell	Aqeel Zainaddin
19	219 Russell	Sarah Jacobo
	219 Russell	Lisette Jacobo
20	220 Russell	Qiana Aviles
	220 Russell	Yvette Perez
21	227 Russell	Taewon Kim
	227 Russell	Donghee Koo
	227 Russell	Eyan Kim
	227 Russell	Gavin Kim
22	233 Russell	Gianni Davis
	233 Russell	Danielle Fields
	233 Russell	Eric Davis

	233 Russell	Tariq Witherspoon
23	235 Russell	Lillian Wanek
	235 Russell	Curt Wanek
	235 Russell	Jessica Wanek
24	236 Russell	Mohammedamin Mulla
	236 Russell	Anjunmara Mulla
25	251 Russell	Monica Zlotogorski
26	252 Russell	Marina Rubinstein
	252 Russell	Jasmin Putyatina
	252 Russell	Alla Zakharova
	252 Russell	Fedor Zakharov
27	253 Russell	Doyoung Kim
	253 Russell	Bo M. Kim
	253 Russell	Ellie Kim
28	254 Russell	Elvira Yamilova
	254 Russell	Alfiia Iamilova
	254 Russell	Maxim Kornev
	254 Russell	Gianna Stathopoulos
	254 Russell	Konstantinio Stathopoulos
29	303 Russell	Rhonda Gardner
30	304 Russell	Sylvester Odiase
	304 Russell	Ikelia Harriott
31	305 Russell	Tracey Blank
	305 Russell	Mark Blank
	305 Russell	Cooper Blank
	305 Russell	Miles Blank
32	308 Russell	Aditi Saraf-Bazaz
	308 Russell	Gaurav Bazaz
33	314 Russell	Maria Isabel Pinilla
	314 Russell	Nicolas Warren
34	316 Russell	Tahir Jamil
	316 Russell	Sophia Jamil
	316 Russell	Saira Jamil

	316 Russell	Taimur Jamil
35	318 Russell	Onur Oruc
	318 Russell	Elif Oruc
	318 Russell	Nuran Namal
	318 Russell	Necati Oruc
	318 Russell	Esra Oruc
36	321 Russell	Ali Abukhamsin
37	324 Russell	Kyung Mi Bae
	324 Russell	Dongwan Choi
	324 Russell	Junkyung Choi
38	326 Russell	Roslyn Sandifer
	326 Russell	Jon Marc Sandifer
39	331 Russell	Charmant, Inc.
	331 Russell	Sota Osakada
	331 Russell	Yu Osakada
	331 Russell	Mutsumi Osakada
40	333 Russell	Avivit Fisher
	333 Russell	Maximilian Schmeeckle
	333 Russell	Jon Schmeeckle
41	334 Russell	Dawood Almesher
42	339 Russell	Chang Hyun Lee
	339 Russell	Joo Hyun Lee
	339 Russell	Hee Young Lee
43	340 Russell	Yuma Kataoka
	340 Russell	Tomomi Kataoka
	340 Russell	Hiroshi Kataoka
44	341 Russell	Pierre Romain
45	342 Russell	Melissa Torres
	342 Russell	Michael Gutierrez
46	345 Russell	Froilan Pinili
	345 Russell	Danielle Krause
47	350 Russell	Rosina Barbastefano Aragon

	350 Russell	Isabela Quintero
48	353 Russell	Amishi Mittal
	353 Russell	Hemang Mittal
	353 Russell	Divya Agarwal
	353 Russell	Amit Mittal
49	355 Russell	Zohar Maimon
50	401 Russell	Tim Baek
	401 Russell	Esther Shin
	401 Russell	Joshua Baek
51	407 Russell	Ramon Pagan
	407 Russell	Carmon Pagan
	407 Russell	Katherine Pagan
52	409 Russell	Michael Zorya
	409 Russell	Alexey Zorya
	409 Russell	Olesya Zorya
53	412 Russell	Nicole Jacobson
	412 Russell	Monica Jacobson
	412 Russell	Douglas Jacobson
	412 Russell	Douglas Jacobson, Jr.
54	413 Russell	Brian D. Mogck
	413 Russell	Juliane T. Mogck
	413 Russell	Vincent Mogck
	413 Russell	David Mogck
55	415 Russell	Michael P. Reilly
	415 Russell	Karen S. Higginbotham
56	419 Russell	Noriaki Masuda
	419 Russell	Hana Masuda
	419 Russell	Sawa Masuda
	419 Russell	Kozue Masuda
57	431 Russell	Donghun Lee
	431 Russell	Jooyoung Park
58	432 Russell	Ryan Kim
	432 Russell	Yoon Young Choi
	432 Russell	Dong Joon Kim

59	433 Russell	Marat Yusipov
	433 Russell	Kirill Safarov
	433 Russell	Albina Safarov
	433 Russell	Elsa Safarova
60	434 Russell	Miyoko Kawaguchi
	434 Russell	Kota Kawaguchi
61	435 Russell	Martin Walters
62	437 Russell	Nicholas King
	437 Russell	John Kang
	437 Russell	Bianca Kang
63	439 Russell	Navin Rao
	439 Russell	Aanchal Rao
	439 Russell	Veena Rao
64	445 Russell	Barry Kay
	445 Russell	Lindsay Styles
65	446 Russell	Kevin Hong
66	458 Russell	Mohanad Hasan
	458 Russell	Rand Ameer
	458 Russell	Zain Hasan
	458 Russell	Tammar Hasan